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Written statement* submitted by the World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Enforced Disappearance in Indian Occupied Jammu and Kashmir

Enforced disappearance is defined, in short, as the abduction or deprivation of liberty of a person by state authorities, followed by the denial of those authorities to disclose the whereabouts or fate of the person.

The convention puts an obligation on states to bring enforced disappearance offenders to justice. The convention provides for a number of procedural safeguards so that people don't go missing: people deprived of liberty have to be kept in an official place, to be registered, to have all their movements registered. Most importantly everyone deprived of liberty must be allowed contact with the outside world, especially to communicate with their family and counsel, and the family and counsel have a right to information on the detention and whereabouts of the person.

The convention recognizes that the victims of enforced disappearances are not only the disappeared themselves but also their relatives. It acknowledges the right of the families to know the fate of their relatives, and also recognizes that victims of enforced disappearance have a right to reparation for the wrong that was done to them.

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Though, the Enforced Disappearance is a global phenomenon but mostly it exists in the under developed countries. The phenomena of enforced disappearances emerged in Indian occupied Jammu Kashmir soon after the 1989 when there was renewed uprising against Indian suppression and for the demand of right to self determination. The heavy military deployment, over seven hundred thousand, which makes Indian, held Kashmir world's heavily militarized zone. Among many other crimes committed against humanity in disputed territory, the Indian army is also accused of subjecting 8000 to 10,000 enforced and involuntary disappearances since 1989. India signatory to International convention on enforces disappearances has been able to side-step international human rights conventions through a series of laws that grant special powers to the armed forces in Indian held Jammu Kashmir.

The Indian government has empowered its military through special security legislations like the Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA), granting them sweeping impunity for acts carried out under these laws, which in turn facilitate the bringing about of enforced disappearances and other human rights abuses.

AFSPA for instance grants the 'powers' to members of the armed forces in 'disturbed areas' like Kashmir to shoot to kill or arrest persons on the ground of 'mere' suspicion. That is not only in contravention to core human rights standards, which guarantee a fair trial, but also goes against the basic principle of Indian criminal law itself: 'One is presumed innocent unless proven otherwise'. Likewise, the PSA provides for holding the arrested person in custody without trial for up to two years, dumping fair and speedy trial guarantees.

In Kashmir, many of those arrested under AFSPA or PSA never make it out of detention centers. They are held under 'incommunicado' detention (unacknowledged and secret detention) leading to enforced disappearance, tortured or subject to extra-judicial killings.

United Nations Special Rapporteur on extra-judicial killings and summary execution, Special Rapporteur on the situation of human rights defenders, Human Rights Watch, Amnesty International and other local and international human rights watchdogs identified the Armed Forces Special Powers Act (AFSPA) as a fundamental problem in the continuing lack of justice served in the country. The act, which was applied in Indian occupied Kashmir from 1990, stipulates that army receive legal immunity for their actions – no prosecution, law suits or other legal proceedings can be initiated against them. Perpetrators responsible for the disappearances of individuals, who then often end up executed or tortured and in mass graves, can hide behind the act, allowing them to live freely despite their crimes. Coupled with the lack of any investigation by the Indian Government the AFSPA is allowing murder, torture, and disappearance on a large scale throughout Indian held Kashmir. The government of Jammu and Kashmir has confirmed that a total of 3,744 persons have gone missing since 1990, but this figure is said to be a gross underestimate by the Association of Parents of Displaced Persons (APDP.

In 2009 international peoples tribunal for human rights Jammu Kashmir and Association of Parents of disappeared persons release a report, "Buried evidence" . This report documents 2,700 unknown, unmarked, and mass graves, containing 2,943+ bodies, across 55 villages in Bandipora, Baramulla, and Kupwara districts of Kashmir, based on applied research conducted between November 2006-November 2009.

In 2011 state human rights commission of Indian Held Kashmir conducted an investigation which not only vindicated the report of the IPTK 0f 2009 but against the earlier claims of the Jammu Kashmir police and Army that those buried in these unmarked mass graves are foreign militants, has stated that 574 bodies have been identified as locals following their burial. This indicts the government's negligence in identifying unclaimed bodies. Based on the above, the SHRC report evidences that there is every possibility that the 2156 unmarked graves hold the bodies of persons that were involuntarily disappeared. The cases of the 574 bodies also intimate that numerous persons have been killed in fake encounters and secretly buried in unmarked graves to conceal their identity. IPTK's 2009 report too had documented a list of 49 bodies, all designated by the state as "foreign militants," 47 of whom, on investigation, proved to have been killed in fake encounters, and none were identified as foreign insurgents.

Enforced disappearances impact on the enjoyment of a number of rights by both the disappeared person and her or his family; these include the right to health, the right to education, the right to take part in cultural life, the right to social security, the right to property, the right to family life and the right to housing .These violations appear even more evidently when the person who is forcibly disappeared is the "breadwinner". The majority of those subject to enforced disappearances are men, often the primary or sole source of income in the family. Many of these men leave behind wives and families when they disappear; these family members are often socially stigmatized and, in particular, women whose husbands have disappeared often are ostracized in the community because their husbands are falsely accused of crimes, or because people fear associating with someone who has been the target of an enforced disappearance.

The situation is not different in Indian Held Kashmir. Over 2500 women whose husbands have disappeared but have not yet been declared deceased are in a precarious and dangerous position. The men who have disappeared but are not declared dead have left thousands of women to assume the title of half widow, half wife. These women and children are in precarious with no legal protection, rendering many desperate and homeless and paving the way for abuse and exploitation.

The International Peoples' Tribunal on Human Rights and Justice (IPTK) and the Association of Parents of Disappeared Persons (APDP), constituents of Indian Occupied Jammu and Kashmir based Jammu Kashmir Coalition of Civil Society (JKCCS), have released a report on 9 September 2015 about human rights violations committed by Indian security forces in Indian Occupied Jammu and Kashmir. "Structures of violence; The Indian state in Jammu and Kashmir." Earlier in 2012 IPTK and APDP released a report Alleged Perpetrators which identified 500 alleged perpetrators responsible for 214 cases of human rights violations in IOK. In 2009 IPTK/APDP report Buried Evidence investigated the phenomenon of unmarked and mass graves in North Kashmir in IOK.

Prepared over the period of two years, the report holds Indian security forces for the **disappearance of 8000+ persons**, 70,000+ deaths, 6000+ unknown, unmarked and mass graves, and countless cases of torture and sexual violence in Indian Occupied Jammu and Kashmir. Overall the report documents the extra-judicial killings of 1080 persons and enforced disappearances of 172 persons and numerous cases of torture and sexual violence. The report, while illustrating the patterns of violence through individual case studies, is directly concerned with identifying the structure, forms and tactics of violence of the Indian State in IOK.

While pointing out the culture of impunity in IOK the report observes that 'the institutions and procedures of rule of law in Jammu and Kashmir (IOK) have been subverted to function within the larger culture of institutionalized impunity and violence'. The report calls the cases documented in it as 'crimes of Genocide, Crimes against Humanity and War Crimes under international law'

The Indian government's refusal to officially recognize enforced disappearances has left families in perpetual limbo, promulgating stress and psychological trauma for parents, spouses and children. World Muslim congress calls upon India;

To ratify International convention against enforced and involuntary disappearances

Accept the request of working group for the country visit, which is pending for a long time.
Repeal all legislations which facilitate human rights violation and provide impunity to perpetrators, including Armed Forces Special Powers Act
This organization also calls an international investigation to the issue of Unmarked Mass graves and DNA profiling of the remains of the buried.